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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 SERGEY VLADIMIR AIZEN,

14 Defendant.

15 Case No.: 16cr1836-LAB-1 and
16 17cv2330-LAB

17 **ORDER DENYING PETITION
18 UNDER 28 U.S.C. SECTION
19 2255**

20 Petitioner Sergey Vladimir Aizen pled guilty to importation of cocaine
21 pursuant to a plea agreement. He was sentenced to 46 months' imprisonment
22 followed by three years' supervised release. He filed an untimely notice of appeal,
23 which was dismissed. The order dismissing his appeal noted that he was not
24 foreclosed from filing a motion under 28 U.S.C. § 2255 bringing ineffective
25 assistance of counsel claims, without explaining the factual basis for any of them.

26 On April 17, the Court issued an order pointing out the deficiencies in Aizen's
27 petition, and giving him leave to amend it no later than May 17, 2018. If he did not
28 amend his petition, the order cautioned, the Court would rule on his unamended
 petition. The order, citing *United States v. Johnson*, 988 F.2d 941, 945 (9th
 Cir.1993), pointed out that merely conclusory claims do not warrant relief. The
 order, citing *Strickland v. Washington*, 466 U.S. 668, 687–88, 692 (1984), pointed

1 out that, to obtain relief, Aizen was required to show both that his counsel's
2 performance fell below an objective standard of reasonableness, and that it
3 prejudiced him. Aizen knew that his counsel's performance was presumed to be
4 competent, and that it was his burden to establish ineffective assistance of
5 counsel; his own § 2255 petition (citing *Strickland*) says as much. (See Docket no.
6 35 at 2.) The Court granted Aizen more time to amend his petition (Docket no. 39),
7 but he has failed to do so.

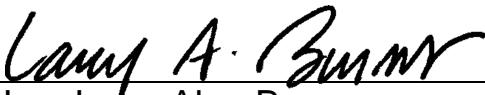
8 As the April 17 order pointed out, the record shows that some of Aizen's
9 claims are baseless. For example, he claimed his attorney failed to negotiate a
10 plea agreement for him. In fact, Aizen's attorney did negotiate a plea agreement;
11 it is filed in the docket (Docket no. 17), and Aizen both signed it and initialed each
12 page, signifying that he had read it and understood it. (See *id.* at 12:20–13:1.) The
13 record also shows that Aizen understood the risks and benefits of pleading guilty
14 pursuant to the plea agreement. (See Docket nos. 15, 19.)

15 The remaining claims are purely conclusory, and are supported by no factual
16 allegations. “Merely conclusory statements in a § 2255 motion are not enough to
17 require a hearing.” *Johnson*, 988 F.2d at 945 (quoting *United States v. Hearst*, 638
18 F.2d 1190, 1194 (9th Cir. 1980)).

19 Because record shows that Aizen is entitled to no relief on some of his
20 claims, and because all of them are purely conclusory, no hearing on his § 2255
21 petition is necessary. The petition is **DENIED**.

22 **IT IS SO ORDERED.**

23 Dated: March 20, 2019

24 
25 Hon. Larry Alan Burns
26 Chief United States District Judge
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